***THE HON'BLE SRI JUSTICE C.V.NAGARDJUNA REDDY**

+WRIT PETITION Nos.14605 & 24265 OF 1997

% Dated 21-09-2006

W.P.No.14605 of 1997

Satyavarapu Appalaraju & others

Petitioners

VERSUS

$ Government of A.P., rep., by its
Principal Secretary, Municipal Administration,
Secretariat Buildings, Hyderabad & others.

Respondents

! Counsel for Petitioners : Shri K.S. Murthy.

^Counsel for respondent No.1 : G.P. for Municipal Administration
Counsel for respondent No.2 : Shri S. Nageswara Rao
Counsel for respondent Nos.3&4: Shri K.V.Subrahmanya Narasu

W.P.No.24265 of 1997

K. Srinivasa Rao & others

Petitioners

VERSUS

$ State of Andhra Pradesh, rep., by its Principal Secretary to Govt., Municipal Administration Department,
Secretariat, Saifabad, Hyderabad & others.

Respondents

! Counsel for Petitioners : Shri D.V. Sitharam Murthy.

^Counsel for respondent No.1 : G.P. for Municipal Administration
Counsel for respondent No.2 : Shri S. Nageswara Rao
Counsel for respondent Nos.3&4: Shri K.V.Subrahmanya Narasu

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? Cases referred

1. (2003) 6 SCC 545
2. AIR 1970 SC 645
3. AIR 1980 SC 1037

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

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W.P.No.14605 of 1997

Between:
Satyavarapu Appalaraju & others

... Petitioners

AND

Government of A.P., rep., by its Principal Secretary,
Municipal Administration,
Secretariat Buildings, Hyderabad & others.

... Respondents

Counsel for the petitioners : Shri K.S. Murthy

Counsel for respondent No.1: G.P. for Municipal Administration
Counsel for respondent No.2: Shri S.Nageswara Rao
Counsel for respondent Nos.3&4: Shri K.V.Subrahmanya Narasu

W.P.No.24265 of 1997

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Counsel for the petitioners : Shri D.V.Sitharam Murthy

Counsel for respondent No.1: GP for Municipal Administration
Counsel for respondent No.2: Shri S.Nageswara Rao
Counsel for respondent Nos.3&4: Shri K.V.Subrahmanya Narasu

Dated: 21st September, 2006

: COMMON ORDER :

PER HON'BLE SRI C.V.NAGARJUNA REDDY,J

Since common issues arise in both the writ petitions, they are being disposed of together.

WP.No.14605 of 1997

The petitioners in this writ petition are residents of Saluru, which is a Municipality in Vijayanagaram District. In the affidavit filed in support of the writ petition they averred that National High Way No.43 (NH-43) passed through Saluru town. There is a church called St.Paul's Luthern Church (4th respondent) situated adjacent to NH-43. Many citizens of Saluru approached NH-43, via Anjaneyaswamy Temple street. Besides the temple there is a music school on the same street. People going from Anjaneyaswamy Temple street to NH-43, use a road which is 20 feet wide and 100 feet long (hereinafter called as disputed road). The disputed road is flanked on one side by the church and on the other side by a business firm by name S.V. Engineering workshop. Many citizens including the college and school children use the disputed road every day. In Municipal plan the disputed road is marked in field No.294. On 03.07.1997 citizens of Saluru town were stopped suddenly from using the disputed road. The persons who put up the barricades across the disputed road claimed themselves to be the agents of the 4th respondent – church.

It is further averred in the affidavit that the 2nd respondent – Municipality was developing the disputed road by laying metal on it. The citizens of Saluru including the petitioners protested against the encroachment of the road and approached the municipal authorities to take action against the 4th respondent – church. The 2nd respondent – Municipality claimed that a deed of exchange of property had taken place about ten years back. According to the petitioners, rule 4 of Acquisition of Transfer of Immovable Properties Rules 1967 (for short "the Rules") prohibits municipal councils from alienating any property which costs more than Rs.10,000/- without the previous sanction of the Government. The Saluru municipality requires wide and more number of roads and lanes and by-lanes which are essential for smooth flow of traffic around the national highway. Alienation of 20 feet road by the 2nd respondent – municipality is in willful violation of statutory rules and against the public interest. The petitioners sought for a writ of Mandamus to declare the action of the 2nd respondent in alienating the road portion in F.No.294 admeasuring about 236 Sq. yards to the 3rd respondent (wrongly mentioned as 2nd respondent) vide deed dated 19.02.1987 as illegal, arbitrary and unconstitutional.

WP.No.24265 of 1997

In this writ petition also the very same exchange deed dated 19.02.1987 under which an extent of 236 Sq. yards was given away to the 3rd and 4th respondent by the 2nd respondent is questioned by another set of six persons, who also claim to be the residents of Saluru municipality. The averments in the affidavit filed in support of this writ petition are also in the same tenor as that of the averments in W.P.No.14605 of 1997. Hence, they need not be repeated once again.

The petitioners in this writ petition referred to and relied on

Section 35 of the A.P. Municipalities Act 1965 to contend that all public streets including pavements, stones etc., vest in the municipal council. The petitioners also relied upon rule 4 of the rules and contended that the transfer of the disputed road whose value is above Rs.10,000/- was made by the 2nd respondent without obtaining the prior sanction of the State Government and that therefore, the said transfer shall be declared as void.

One Sri A.Venkat Rao, Commissioner, Saluru Municipality, filed separate counter-affidavits in both the writ petitions. The Commissioner denied the averments in the writ petitions that the people passing through Anjaneyaswamy Temple street, to reach national high way, use the disputed road. It is mentioned in the counter that Anjaneyaswamy Temple street joins the national high way at the North-East corner of the church, obviating the necessity for people to pass through the disputed road to reach the national high way. It is stated in the counter-affidavit that in the year 1977 the State Electricity Board, erected a transformer right across the Eastern end of the disputed road and also planted electrical poles and that the said road became a blind lane and not being put to use for the last twenty years. It has been specifically asserted that this disputed road is not used by the public during the last twenty years and that the same is not maintained as road by the Saluru municipality. It is also stated that the site was being used by public as a public lavatory and therefore the municipality felt that it is appropriate to exchange this area with respondents 3 and 4 by taking a piece of land belonging to the latter. The 2nd respondent – Municipality has constructed a Social Welfare Hostel on the piece of land taken from respondents 3 and 4 in exchange. The 2nd respondent denied the allegation of the petitioners that they came to know about the exchange of land all of a sudden on 03.07.1997 and it is claimed in the counter-

affidavit that consequent on the execution of the registered exchange deed on 19.02.1987, the physical possession of the disputed road was handed over to the respondents 3 and 4 in whose name the property was mutated in the municipal records. The 2nd respondent in the counter-affidavit relied upon its resolution No.281 dated 12.12.1986 wherein the exchange of the lands was approved. In response to the 2nd respondent's letter issued in proceedings Roc.No.2177/86 dated 13.12.1986, the District Collector, Vijayanagaram District, accorded permission for alienation through exchange of the disputed road with a piece of land belonging to respondents 3 and 4 situated in Konki street through his proceedings Rc.No.10975/86 dated 15.12.198, consequent upon which the exchange deed was registered on 19.02.1987. Following the execution of exchange deed, the physical possession of the property was delivered to the 4th respondent. The commissioner denied any public protest against the exchange transaction reiterating the averment that the disputed road, since abandoned, is not useful to public and that the use of the site as public lavatory by the nearby hut dwellers was emanating foul smell causing inconvenience to the worshipers of Anjaneyaswamy Temple and the church. It is also mentioned in the counter-affidavit that one Vulli China Veera Raju and two others filed a civil suit vide O.S.No.471 of 1987 on the file of the District Munsif, Saluru, claiming to represent the public of Saluru seeking perpetual injunction against the 2nd respondent – Municipality and respondents 3 and 4 from interfering with the use of the disputed road by public and also for a mandatory injunction directing the defendants therein to remove all the constructions made over the disputed road. It is also averred that the 4th respondent filed O.S.No.501 of 1987 against the plaintiffs in O.S.No.471 of 1987 and that both the suits were tried together and that O.S.No.471 of 1987 was

dismissed and O.S.No.501 of 1987 was decreed by granting perpetual injunction restraining the plaintiffs in O.S.No.471 of 1987 from operating a gate way, out door way, or window into the disputed road.

Similar averments have been repeated in the counter-affidavit filed by the Commissioner in W.P.No.24265 of 1997.

Sri K.S. Murthy and Sri D.V. Sitaram Murthy, learned counsel appearing for the petitioners vehemently contended that the impugned exchange deed dated 19.02.1987 is arbitrary and illegal, being in contravention of rule 4(1) of the rules. It is apt to consider rule 4(1), which is extracted hereunder:

> "4. TRANSFERS OTHERWISE THAN BY LEASE OF IMMOVABLE PROPERTY VESTING TO MUNICIPAL COUNCIL:
>
> (1) A municipal council shall not without the previous sanction of the Collector of the District make or sanction any transfer except by way of lease, of any immovable property, belonging to it or create or sanction of the creation of any charge upon any such property. If the value of the property so transferred or the amount for which the charge is so created exceeds Rs.10,000/-, the previous sanction of the Government shall also be obtained for the transaction.

It is clear from the rule extracted above that if the value of the property proposed to be transferred exceeds Rs.10,000/-, it is incumbent upon the municipal council to obtain previous sanction of the Government. Interestingly, though specific averment was made in both the writ petitions referring to this rule and contending that the impugned transfer of the land is in violation of this rule as there was no sanction obtained by the municipal council from the Government, both the counters are conspicuously silent on this aspect. The impugned exchange deed has shown the value of the disputed road, described as "B-Schedule Property" as Rs.11,800/-. In the absence of any denial in

the counter-affidavits about the absence of previous sanction of the Government, it shall be taken that the 2nd respondent council has not obtained previous sanction of the Government for the impugned transaction. The language of rule 4 of the rules is couched in mandatory terms, making it obligatory for the municipal council to obtain previous sanction of the Government to alienate any property vested in it whose value exceeds Rs.10,000/-. This rule is obviously conceived in public interest, so that there shall be a check on the indiscriminate disposition of public properties by the municipal councils.

In the instant case howsoever bonafide the action of the 2nd respondent in getting the properties exchanged may be, its failure to obtain previous sanction from the Government runs counter to the mandatory statutory provision. We, therefore, hold that the transfer of the disputed road in favour of the 3rd respondent is contrary to rule 4 of the rules.

The question which remains to be considered is whether the petitioners are entitled to the relief claimed in the writ petitions?

We have given our earnest consideration to this question and we have not felt persuaded to grant the reliefs for more reasons than one.

The exchange deed questioned in these petitions was executed and registered as far back as 19.02.1987. Both the writ petitions were filed more than a decade after the said exchange deed came into existence. Except making a vague averment that the members of public were prevented from using the road in July 1997, there is no specific plea to the effect that the writ petitioners were not aware of the exchange deed for more than ten years. It is not in dispute that the exchange deed was fully given effect to and the 2nd respondent has

constructed a building over the land given away by the 3rd respondent, which is meant for a Social Welfare Hostel. In the event of granting the relief sought for in the writ petitions, the 2nd respondent would be required to give back the property to the 3rd respondent with the building already constructed thereon, which would undoubtedly cause grave prejudice to public interest.

It has been specifically mentioned by the 2nd respondent in the counter-affidavits filed in both the writ petitions that the A.P. State Electricity Board has erected a transformer in the year 1977 apart from planting electrical poles, rendering the disputed road a blind lane. While no reply affidavit was filed denying this averment in W.P.No.14605 of 1997, in the reply affidavit filed in W.P.No.24265 of 1997, the petitioners admitted that the transformer was erected at the eastern side of the disputed road, but they however stated that "*it does not completely block the passage for men and rickshaw".* Even if we accept this averment of the petitioners in W.P.No.24265 of 1997 that the disputed road has not become a completely blind lane, still on the petitioners' own averments it is evident that the utility of the lane has been drastically reduced with the erection of transformer and laying of electrical poles. It is common knowledge that the presence of transformer and the poles on a public street is hazardous to passers by and unfortunately neither the 2nd respondent – Municipal council nor the petitioners who purported to espouse public cause have taken any step to get the transformer and the electrical poles shifted from the public lane since the year 1977.

In this connection, it is significant to take note of the averments made on behalf of the 4th respondent in his two counter-affidavits filed in both the writ petitions. It is specifically pleaded in the counter-affidavits

that after the dismissal of O.S.No.471 of 1987, Sri Vulli Chinna Veera Raju filed an appeal in the Court of Subordinate Judge, Parvathipuram and that the same was dismissed on 30.06.1997. W.P.No.14605 of 1997 was filed within a week thereafter i.e., on 07.07.1997.

As regards the filing of W.P.No.24265 of 1997, it is alleged that in response to the notice issued by the High Court in W.P.No.24265 of 1997, the 4th respondent filed its appearance and a detailed counter-affidavit with a petition to vacate the interim direction. Expecting that the interim directions in the said writ petition is likely to be vacated, petitioners in W.P.No.24265 of 1997 were set up to file the said writ petition.

It is specifically contended that the petitioners in both the writ petitions are henchmen of Sri Vulli Chinna Veera Reddy, the un-successful plaintiff in O.S.No.471 of 1987. The petitioners in W.P.No.14605 of 1997 have not filed any reply affidavit denying these allegations. The petitioners in W.P.No.24265 of 1997 however denied the knowledge of filing of W.P.No.14605 of 1997 and the allegation that they are the henchmen of Vulli Chinna Veera Reddy. They claim knowledge about O.S.No.471 of 1997 and O.S.No.501 of 1987, but they however pleaded that A.S.No.26 of 1997 and A.S.No.27 of 1997 arising out of the judgments and decrees in the said suits are still pending.

Though there is no material on record which directly connect the petitioners in both the writ petitions with the plaintiff in O.S.No.471 of 1987, the sequence of events leading to the filing of the present writ petitions gives rise to serious doubts about their bonafides in filing the writ petitions. Admittedly, the exchange deed was executed in July 1987. Immediately O.S.No.471 of 1987 was filed by Vulli Chinna Veera Reddy. The suit was dismissed on 30.06.1997. Within eight days of the

dismissal of the said suit, W.P.No.14605 of 1997 was filed and interim directions were obtained. On 10.08.1997, a counter-affidavit and a petition seeking vacation of the interim directions were filed on behalf of the St.Paul's Lutheran Church. W.P.No.24265 of 1997 was filed shortly after that i.e., on 21.09.1997.

The aforementioned events cannot be brushed aside terming them as mere coincidences. It is quite clear from the aforementioned facts that the petitioners were waiting for the outcome of the suit filed in the year 1987 i.e., immediately after the execution of the exchange deed. On the dismissal of the suit, the first writ petition i.e., W.P.No.14605 of 1997 was filed and evidently expecting that the interim directions in the said writ petition may be vacated the 2nd respondent filed W.P.No.24265 of 1997. These facts coupled with absence of any explanation for inordinate delay of ten years in approaching this Court make us believe that the petitioners in both the writ petitions are activated by extraneous considerations in filing both the writ petitions more than ten years after the impugned exchange deed rather than impelled by public interest.

In ***CHANDRA SINGH vs STATE OF RAJASTAN***[1] the Supreme Court held that the High Court or the Supreme Court while exercising their extraordinary jurisdiction under Article 226 or Article 32 of the Constitution of India may not strike down an illegal order, merely because it is lawful to do so. The Supreme Court has relied upon its earlier judgment in ***CHAMPALAL BINANI vs C.I.T. WEST BENGAL***[2] in so holding. I n ***SHIV SHANKAR DAL MILLS vs STATE OF HARYANA***[3] it was held that Article 226 grants an extraordinary remedy which is essentially discretionary although founded on legal injury. It is perfectly open for the Court exercising its flexible power to

pass such order as public interest dictates and equity projects.

In the light of the aforementioned principle of law and facts in both the writ petitions, we find it difficult to grant the relief sought for. Though we have held that the alienation is in violation of rule 4 of the rules, we are unable to grant the reliefs sought for in the two writ petitions. Restoration of a public lane, though in public interest, could inevitably result in return of the property taken by the 2nd respondent in exchange, to respondents 3 and 4. As already noted hereinabove, there is already a building constructed by the 2nd respondent and the property with the building would be liable to be handed over to respondents 3 and 4. Thus, we are faced with a situation where there are conflicting public interests. On the factual matrix of this case, we are convinced that the maintenance of *status quo* which preserves the building constructed by the 2nd respondent on the exchanged land serves better public interest than making the 2nd respondent lose this property in lieu of restoring a semi blind lane containing an electrical transformer with electrical poles, which are dangerous to human lives.

In the aforementioned facts and circumstances of the case, both the writ petitions are dismissed, but, however, without costs.

C.V.NAGARJUNA REDDY, J.

21st September, 2006.

G.S.SINGHVI, C.J.

Note:- L.R. Copy to be marked.
(B/o.)
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[1] (2003) 6 SCC 545

[2] AIR 1970 SC 645

[3] AIR 1980 SC 1037